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this Memorandum Decision shall not be
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**IN THE
COURT OF APPEALS OF INDIANA**

JAMIN OSBORNE,

Appellant-Defendant,

vs.

STATE OF INDIANA,

Appellee-Plaintiff.

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No. 45A03-0511-CR-572

APPEAL FROM THE LAKE SUPERIOR COURT
The Honorable Thomas P. Stefaniak, Jr., Judge
Cause No. 45G04-0201-FC-21

September 26, 2006

MEMORANDUM DECISION - NOT FOR PUBLICATION

DARDEN, Judge

STATEMENT OF THE CASE

Jamin Osborne (Osborne) appeals the trial court's order that as a consequence of having violated probation, he must serve five years of his previously suspended sentence.

We affirm.

ISSUE

Whether the trial court abused its discretion when it sentenced Osborne to the full five years of his suspended sentence.

FACTS

On January 9, 2004, the Lake County Superior Court 4, accepted a guilty plea agreement between Osborne and the State, wherein Osborne pleaded guilty to count 1, leaving the scene of an accident resulting in death, a class C felony, and the State agreed to dismiss count 2, operating a vehicle with a controlled substance, a class C misdemeanor and count 3, operating a vehicle with a controlled substance, a class C felony. The plea agreement provided for a sentence as follows:

The parties agree that the defendant shall be sentenced to eight (8) years in the Department of Correction. All of that time shall be suspended except two years. The remaining six (6) years will be served as formal probation. Additionally, the defendant shall serve two (2) years of home detention as a condition of formal probation. The defendant will be ordered to seek and attain his G.E.D. as a condition of formal probation.

(App. 90). The trial court sentenced Osborne consistent with the parties' agreement.

On July 18, 2004, Osborne was released from the Department of Correction. On July 21, 2004, he reported to the probation department where he met with his probation officer, who went over the conditions of probation with him and provided him the

information he needed to sign up for home detention. On July 29, 2004, the probation department filed a petition to revoke Osborne's probation alleging that Osborne failed to report to home detention as instructed by his probation officer. A warrant was issued for his arrest and Osborne was served with it on April 21, 2005, during a traffic stop in Indianapolis. On April 25, 2005, the probation department filed an amended petition to revoke Osborne's probation alleging that he had failed to report to his probation officer since July 21, 2004; failed to pay a \$100 administrative fee within the first sixty days of probation; failed to pay a \$100 initial probation user fee; and failed to pay the monthly probation user fee of \$30 a month.

On October 28, 2005, the trial court conducted a revocation of probation hearing on the petition. Osborne admitted the violation in the petition to revoke probation. After hearing argument of counsel and recommendation from the State and probation department, the trial court revoked Osborne's probation and sentenced him to five years in the Department of Correction.

DECISION

Osborne argues that the trial court abused its discretion when it sentenced him to the full executed five-year sentence. Osborne asserts the sentence is unreasonable because he had not committed any new criminal offenses while on probation.

We review a trial court's decision to revoke probation and its sentencing decision in a revocation proceeding for abuse of discretion. Jones v. State, 838 N.E.2d 1146, 1148 (Ind. Ct. App. 2005).

This court in Jones stated:

Probation is a criminal sanction wherein a convicted defendant specifically agrees to accept conditions upon his behavior in lieu of imprisonment. These restrictions are designed to ensure that the probation serves as a period of genuine rehabilitation and that the public is not harmed by a probationer living within the community. Moreover, as we have noted on numerous occasions, a defendant is not entitled to serve a sentence in a probation program; rather, such placement is a ‘matter of grace’ and a ‘conditional liberty that is a favor, not a right.’

Id. (internal citations omitted). Indiana Code section 35-38-2-3(g) provides that “if a person has violated a condition at any time before termination of the period, and the petition to revoke is filed within the probationary period, the court may . . . order execution of the sentence that was suspended at the time of initial sentencing.” Generally speaking, as long as the trial court follows the procedures outlined in Indiana Code section 35-38-2-3, upon finding a violation by a preponderance of the evidence, the trial court may properly order execution of a suspended sentence. McKnight v. State, 787 N.E.2d 888, 892 (Ind. Ct. App. 2003).

In this matter, the trial court noted during the probation revocation hearing that Osborne’s initial sentence was “not a typical sentence that I give in these types [sic] of case.” (Tr. 36). The trial court shared that in two cases “similar to [Osborne’s] . . . the guy got nineteen years. The other got six years executed.” (Tr. 37). The trial court also observed that nearly fifteen months had elapsed from the time Osborne was told to report to home detention and when the warrant was finally served upon him in Indianapolis, during a traffic stop. When it announced sentence, the trial court stated the following:

In reviewing the presentence report in this case and recalling the events that unfolded at prior hearings, taking all of that into account. Specifically, back at the time the defendant was sentenced, I reviewed the presentence report and saw that in July of ’97 as a juvenile, defendant was arrested for Resisting Law Enforcement. . . .

He was sent to the Juvenile Center in '98. He got intensive probation. His commitment to the DOC was stayed. He was made a ward of the Court. Put in the curfew program, parenting classes, counseling, and psychological evaluation [sic]. In February of '98, he completed the Lake County Juvenile Center. [sic] Was placed on probation.

And intensive probation, level 2, failed in the year 2000. And judgment was entered for the Department of Correction. Also in '97, in November for Truancy, defendant was granted admission. And ultimately his probation was violated the same day as the Resisting Law Enforcement.

Then in November of '98, he was picked up for Resisting Law Enforcement. Got probation. And violated on the same day as the previous mentioned cases.

* * * * *

So it is an ongoing pattern. I recall having specific concerns as I stated on the record. I recall very specifically being inclined to reject the plea agreement, as being too lenient, but I did not because I deferred to his attorney at the time, the State of Indiana, as well as [the victim's wife's] wishes.

Having said that, the defendant, in my estimation, is not going to comply with any order that I ever give him. So having said that, I am going to grant the Petition to Revoke. I am not going to impose the full six years.

(Tr. 58-61).

We do not find that the trial court abused its discretion when it revoked Osborne's probation and imposed the full five year executed sentence.

We affirm.

RILEY, J., and VAIDIK, J., concur.